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TOM LYTHGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
June 1, 2005**

Present: Commissioners Lythgoe, Notbohm and Weber; Harold Stepper, County Planner; Ben Sautter, Road Supervisor; Matt Johnson, County Attorney; Peter Bogy, Bob and Connie Sims, Ken Vivrette, Mike Baker, Peggy Morales, Bill Gruber, Steve Marks, Ben Donaldson, Jan Anderson

SUBDIVISION REVIEW

PRELIMINARY PLAT APPROVAL - HOLT MINOR SUBDIVISION

Harold Stepper, County Planner, presented his staff report and recommended preliminary plat approval be granted. Commissioner Lythgoe asked if the staff involved have visited the site. Harold stated that they have. Commissioner Notbohm moved to give preliminary plat approval to the Holt Minor subdivision. Commissioner Weber seconded. The motion carried.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

GOLDEN SUNLIGHT LITIGATION - PETER BOGY AND BOB SIMS

Peter gave the Commission a document outlining his proposal. He stated that the most cost effective way for Jefferson County to become involved is to file a brief of an *amicus curiae* to the Supreme Court. He has discussed this with Alan Joscelyn, attorney for the mine and with the County Attorney. This is a two-fold process. First, preparing and filing the motion with the Supreme Court and second, preparing the *amicus* brief. Peter stated that hiring an environmental attorney is not cost feasible. However, he has discussed this with Matt, and the County could hire him to do the research and work under Matt on the motion and brief. He stated that the effect of this is the opportunity for the County to lay out in detail its concerns regarding the litigation, and ensures that its position is well published across the state, especially in the Missoula area. Commissioner Lythgoe asked if it is more realistic that this will get thrown back to District Court after the SEIS comes down. Matt stated that it is hard to tell. Commissioner Lythgoe asked if the Supreme Court were to rule in the County's favor and dismiss the case, is it done with. Peter stated that it would be, for the moment, although the environmentalists may re-file. The Supreme Court may also remand the case back to District Court. In this case there would be no need to re-file, but the case would be heard again. Commissioner Weber asked if the brief would be filed on the existing case. Peter stated that it would be on the current case,

which is still alive. The court heard the case and then sat back to wait and see what the SEIS says. It is his hope that the Supreme Court will dismiss the case. Commissioner Weber asked what type of time frame they are looking at. Peter stated that he doesn't know. It depends on when the SEIS is filed.

Matt stated that he is stretched thin and has no time to research and prepare a brief. It would be great to have Peter work on this. If there is an opportunity for oral arguments, he would do it, and sign off on the brief prepared by Peter. Fiscally, he has no budget to pay for this. Commissioner Weber asked for a ballpark figure of costs. Peter stated that he feels he can get it done for less than \$5000.00, plus costs, which would include some filing, etc. Commissioner Notbohm stated that he would like to know more about the potential costs before he decides. Peter stated that costs can be discussed when they meet to discuss the agreement. The agreement can be made with ceilings. Commissioner Lythgoe stated that he is personally committed to go forward with this. Like Commissioner Notbohm, he is concerned with costs, but he feels this is a good use of metal mines funds. This is not money that is going to affect the general budget. He asked Peter what he is looking for that day. Peter stated that he is not looking for a decision today, just a feeling if this is a good idea or not. They can get together to see if it is feasible.

Commissioner Weber moved that the Commission proceed in the direction laid out in the brief Peter Bogy presented. Commissioner Lythgoe seconded. Commissioner Notbohm stated that between now and the meeting, any other information that is available would be helpful. Peter stated that he will present an RFP and they can go from there. Commissioner Lythgoe stated that if Peter has a time in mind to let them know as soon as possible so that the meeting can be noticed for public participation. Commissioner Weber stated that it is important to bring Ed Handl into the process. Peter stated that this is a good idea; they will also need a media liaison. The motion carried.

Bob Sims stated that there is more that can be done with less cost, and it can be done by the Commission. He stated that the day before a meeting was held with the new director of DEQ, the new head of BLM and Golden Sunlight officials. These people will be involved with the litigation process. Bob stated that he talked with Greg Halsteen that morning, and Greg feels that the Commission should go to Helena and talk with the new head of DEQ to discuss the County's stance. The Commission should also talk to Jim Jensen of MEIC. If they can convince Mr. Jensen that no litigation is needed, it will save the County a lot of money. He also suggested that the County send a letter to each litigant and ask them why they are willing to sacrifice the environment for the lawsuit. He stated that if the County can drive a wedge between these people the County will be better off. Commissioner Lythgoe stated that these are all good ideas.

PUBLIC HEARING - BUDGET AMENDMENT - USE OF UNANTICIPATED FUNDS - ROAD DEPARTMENT

Commissioner Lythgoe called the public hearing to order. Ben stated that they have some money, \$6,200, from work done for the Solid Waste District. These are unanticipated funds that he would like to use for capital outlay, for the purchase of a belly dump.

Hearing no further comments, Commissioner Lythgoe closed the public hearing.

Commissioner Weber moved to allow Ben to take the unanticipated proceeds from work done for the Solid Waste District to be used for capital outlay, line item 904. Commissioner Notbohm seconded. The motion carried.

PUBLIC HEARING - PETITION TO CLOSE ROAD LOCATED IN T4N, R2W

Commissioner Lythgoe called the hearing to order. He stated that Commissioner Weber and Ben Sautter viewed the road in question. Commissioner Weber stated that some of the road exists, and some is very difficult to find. After viewing the road, he spoke to the mapping department and asked that in the future, they delineate exactly which road they are going to see. There are many roads out there, some of which are a two-track trail. In the future, they need a GPS reading. Commissioner Weber stated that his concern is that this road accesses two state sections, which is public land. It is inadvisable in his mind to close off county access to these lands. Ben stated that he agrees with Commissioner Weber on public access. Also, some portions of the road are a deeded access. Ben stated that it is not in the public's best interest to take that road away.

Ben Donaldson stated that he thinks that we are getting too many roads closed. Commissioner Notbohm stated that when he and Ben Sautter were up there last year to look at this road, it was obvious that this road links up and goes into Broadwater County.

Hearing no further comment, Commissioner Lythgoe closed the public hearing.

Commissioner Weber moved to deny the petition to close the county road located in T4N R2W. Commissioner Notbohm seconded. The motion carried.

PUBLIC HEARING - PETITION TO CLOSE ALLEYS AND STREETS IN CLANCY

Commissioner Lythgoe called the public hearing to order. Commissioner Notbohm stated that he, Ben Sautter and Steve Marks viewed the alleys and streets petition for closure. The alley was platted, but never put in. There is also a portion of Cherry Street that was left off of a previous petition. He stated that there is no impact to the County and none of the neighboring landowners have a problem with the closure. He recommended that the petition be granted.

Ben stated that this is housekeeping. These are fragmented portions left off of a previous petition.

Hearing no further comment, Commissioner Lythgoe closed the public hearing.

Commissioner Notbohm moved that they grant the petition to close alleys and streets in Clancy, as set forth in the petition. Commissioner Weber seconded, and asked when the abandoned property is given to the adjoining landowners, if it is done equitably. Commissioner Notbohm stated that this is outlined in the petition. The motion carried.

SIGN AGREEMENT WITH MDT FOR INFRASTRUCTURE STUDY

Commissioner Lythgoe stated that the Commission has previously agreed to enter into this agreement, and has agreed to the amount of match. They finally have the agreement in hand, and just need to sign it. While it was being signed, Ben explained what the study will accomplish. Jan Anderson asked what the amount of the match will be. Ben stated that the County's match will be \$12,000, with the state granting up to \$48,000. Commissioner Weber stated that it is important to note that the County's match is 20%, up to \$12,000.

RESOLUTION 15-2005 LIFTING AG COVENANT ON BOMPART PROPERTY

Commissioner Weber read the resolution as follows:

RESOLUTION 15-2005

RESOLUTION TO APPROVE THE REVOCATION OF AN AGRICULTURAL COVENANT

WHEREAS, Pam and Virginia Bompart own a 11.81 acre tract of land (*See attached Exhibit "A"*) that has a restrictive agricultural covenant placed upon it; and

WHEREAS, Montana Code Annotated § 76-3-207(1)(c) requires that an agricultural covenant running with the land is only revocable through the mutual consent of the governing body and the property owner; and

WHEREAS, a public hearing was held on May 25th, 2005 where the Commission heard testimony on said property and covenant;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to § 76-3-207(1)(c), MCA the Jefferson County Board of Commissioners hereby gives consent to revoke the agricultural covenant placed upon the above described property and it is now hereby designated Residential Low Density #2, per Jefferson County Zoning.

DATED this 1st day of June, 2005.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER

Commissioner Weber moved to pass Resolution 15-2005. Commissioner Notbohm seconded. The motion carried.

SIGN MOA BETWEEN JEFFERSON COUNTY, LEWIS & CLARK COUNTY, CITY OF HELENA, PADBURY PROPERTIES LLC, KNOB HILL PROPERTIES LLC, AND MDT FOR I-15 SOUTH HELENA INTERCHANGE AND WEST FRONTAGE ROAD

Commissioner Lythgoe stated that this MOA has been circulated prior to the meeting and signed off on by the County Attorney. The Commission has reviewed it, as well as the Clerk and Recorder. It has already been signed by the City of Helena, Lewis & Clark County and MDT. He requested that he be allowed to sign the agreement for Jefferson County.

Commissioner Weber moved to authorize the Chair to sign the MOA between the listed groups. Commissioner Notbohm seconded. The motion carried. Commissioner Lythgoe explained that there is a small piece of frontage road in Jefferson County. Jefferson County has dedicated some CTEP funds to the project. This agreement obligates Jefferson County to deal with right-of-way issues in Jefferson County to provide proper right-of-way. Harold noted that this deals with less than half an acre.

DISCUSS AND DECIDE ON AMENDMENTS TO COUNTY ROAD STANDARDS

Commissioner Weber noted that they are still struggling through some of the language. He and Ben met with Alan Erickson that morning, and they are trying to get some clarity in the language regarding subdivision roads and county roads. He stated that there is a general feeling that these standards just pertain to subdivision roads, but they are also dealing with county roads. It was recommended that instead of trying to deal with a lot of separate amendments, which covers a lot of items, it would be better to have an entire document to present to the public. Ben stated that he agrees with this. Going article by article, he sees a lot of conflicting items. Once the document is rewritten, people will see the document in its entirety, rather than a bunch of amendments. It will be a cleaner, much clearer document.

Commissioner Lythgoe stated that he is very appreciative of all who have come forward regarding the amendments; this will result in a better document. When it is presented in draft form, the public will still have an opportunity to comment on it. They hope to have it out by the 10th. Ben stated that they are shooting for the 10th, definitely by the 15th. Commissioner Lythgoe stated that it will be on the website and out on counters throughout the county. The Commission has listened to the input and slowed down the process. If there is more to discuss, that can still happen. He apologized for not having it done sooner, but as Ben, Alan and Commissioner Weber got into the document, they found that there was much to be done. Comments received

will be incorporated. Commissioner Notbohm asked if they could give the people in attendance a time frame of when they can expect this to be on a Commission agenda again. Commissioner Lythgoe stated that this was discussed in the road meeting on Tuesday. This item will not be dealt with in a Commission meeting until July 6. Commissioner Weber noted that the Commission will still be accepting comments during that time. Commissioner Lythgoe stated that the Commission isn't under any illusion that what they put on the table on the 10th will please everyone.

Bill Gruber stated that this started as a subdivision road policy, and asked if the Commission is planning to hold the county roads to this standard too. Commissioner Lythgoe stated that, yes, this is a standard for road construction in the county. Any new roads constructed in the county will be built to standards. Roads in the county are currently just maintained, and they understand that many are not to standard. The hope is to, over time, bring all the roads up to standard. Bill stated that the County can't afford to do that. Commissioner Weber stated that the Commission understands that they aren't going to go out next year and bring our 400 miles of roads up to standards. But, if the road department is going to re-do a road, it will be built to standards.

Commissioner Lythgoe stated that it is going to be a much slower process than in a subdivision, but if they are going to re-do a road, it will be done to standards. Steve Marks stated that this will be very expensive, and asked what the County will do about roads with no easement. He also asked if minor subdivisions will be held to the standard of having the roads engineered. Commissioner Lythgoe noted that he and Commissioner Notbohm haven't been involved in the conversations with Ben and the engineer, so he can't answer this question. Commissioner Weber stated that they are struggling really hard to figure out where the triggers are. If you have a string of minors that add up to 400 ADT, what are the triggers and who pays for the road. They are considering density or ADT; he can't give a concrete answer yet, but they are working on it. Commissioner Lythgoe stated that the biggest problem he has is what triggers paving. Bill stated that the way other counties deal with roads, is not to have an engineer design the road, but have an engineer stamp the design. Commissioner Weber stated that they have discussed this, and decided that they are not so concerned that an engineered designed the road, but that the engineer approves that the road meets standards. Bill stated that this is what other counties have done, and it is less money for the developer.

Commissioner Lythgoe stated that they have discussed this before. Surveyors have the ability to lay out roads; Bill has the ability to look at the standards and lay out a road and have an engineer approve the plan. Commissioner Weber stated that they discussed this language, and after listening to input, changed it to have an engineer approve, rather than design.

Steve stated that in crunching numbers for road dollars, it bothers him that some roads in subdivisions get road dollars to maintain a dead-end road that serves a few people, while other roads that serve many people get nothing. He stated that there needs to be an RID and have those who use the road pay for it.

Commissioner Notbohm stated that at the road meeting on Tuesday, Ben asked the

Commissioners for a written statement on the road standards. He gave a verbal comment, which, like Bill, was about the importance of not backing ourselves into a corner. Some roads just can't be brought up to standard.

Ken Vivrette stated that he originally just had the amendments to review, so it will be nice to see the amendments and standards incorporated into one document. One problem he has, however, is that there are so many signatures required before preliminary plat approval. Requiring an engineered plan before preliminary plat approval is not good. The weed department is requiring a site visit and a contract before submittal, but the plan is in the conditions of approval. He would also like to see a big distinction between major and minor subdivisions. Regarding having an engineer approve the road, he noted that the County has a road supervisor, and he should be approving the roads. Ken stated that Ben knows that Bill knows how to build a road.

Commissioner Lythgoe stated that the weed issue is one thing that concerns him. Ken stated that another concern is the schools. The developer is required to come in and sit down and sign a contract. He doesn't care if this is something that is required, but he feels that it should be one of the conditions of approval, rather than before the preliminary. Commissioner Lythgoe stated that he also has a problem with this if this is happening. The signatures required before submittal are just to show that those involved are aware of the application. The rest is up to Harold. Ken stated that the only signature needed before is the fire department, as an independent entity. Commissioner Lythgoe stated that he doesn't have a problem with the developer getting the signatures, as it lets all the parties involved know what is coming down the pike.

Harold stated that all this is, is a heads-up to those involved that a subdivision is coming. This is not the time for any conditions to be made. Time is a factor. He has either 35 or 60 working days, depending on minor or major subdivision, to complete. At some point, Ben and Megan will need to be involved. Commissioner Weber stated that the requirement to have engineered roads before preliminary plat approval has gone away. Commissioner Lythgoe stated that they don't want to make it onerous for those that are trying to develop their property. He questioned Harold about the process, and asked if it is the developer's responsibility to go around and get signatures. Harold stated that yes, this is the process, and asked how else everyone involved would know about the application. Commissioner Lythgoe stated that Harold could let everyone know when he gets the application. Harold stated that he doesn't have time to run around and get signatures. Commissioner Lythgoe stated they need to have everyone involved up front. Some subdivisions, Ben has not been involved with until far down in the process, after construction has begun. Ben stated that he doesn't need to be involved, as long as he has a stamped plan; he's fine with that. Commissioner Lythgoe stated that it is better to do it as it is now. Harold noted that there is also the school and fire department to be concerned with. Commissioner Lythgoe stated that the schools, for the most part, don't require anything, and it is voluntary. Steve stated regarding schools, he doesn't mind this. He has gone around and gotten signatures, but this should be part of the conditions of approval.

Ben stated that they should get back to the topic of roads. He agrees with Steve on subdivision roads. If the roads had been built correctly before the county accepted them, they wouldn't be in there fixing them. Also, if he has a 60-foot easement, he can go in and do what is needed to fix

the road. If they have well-built roads, the road department won't need to be in there. Also, as far as him being the person to approve roads, at the end of the process, he certifies that the roads are built to standards. He stated that it is not on the county that the road is not to standards, but on him. Some feel that since he is not a licensed engineer, he should not be the one to do it. Bill stated that he can have all the signatures in the world, but it is still Ben's call. The developer can have an engineer sign, but that engineer probably doesn't have the road and drainage experience that Ben does.

POLICY REVIEW AND ADDENDUM - USE OF COUNTY VEHICLES

Commissioner Notbohm stated that Matt Johnson asked how this should read, as there is a general consensus that this needs to be addressed. In emergency situations, there can be a variance to the policy, with the approval of two Commissioners. Commissioner Weber stated that he has a problem with this, because two Commissioners can't discuss this together. Commissioner Lythgoe stated that if it is an emergency, there should only need to be one Commissioner's approval. He agreed that the Commissioners wouldn't be able to discuss this. He noted that on some days, there is only one Commissioner in the office, and reiterated that one Commissioner should be able to make the decision. Commissioner Notbohm asked if they should put this aside for now and discuss it further. Commissioner Lythgoe stated that they could adopt it now, with some changes to the wording. Commissioner Weber stated that another problem he has is that non-county employees can ride in county vehicles with only one elected official/department head signature, and this is holding county employees to a higher standard. Commissioner Notbohm stated that he has heartburn with non-county employees in county vehicles, period. They have small children riding to solid waste sites, which is a liability issue. Commissioner Lythgoe noted that this is quality time with the driver's children, the driver is responsible, and he has checked with the insurance carrier and they are okay with it. Commissioner Notbohm asked if they could imagine what it would be like if all the employees wanted to bring their children to work.

Commissioner Lythgoe asked how they should word the approval language; he thinks it shouldn't be just a Commissioner who can approve emergency use, but any department head. Commissioner Weber stated that, in the first paragraph, it states that this is a taxable benefit, and questioned if they need additional language. Commissioner Notbohm stated that the employee needs to be on county business. Commissioner Weber stated that travel to and from work, emergency or no, is covered.

Commissioner Weber moved to adopt the policy as amended. Commissioner Lythgoe seconded. Commissioner Notbohm stated that he would like to add one thing. It states that violations will result in disciplinary action against the employee, but this should be on the elected official or department head too. Commissioner Lythgoe asked how to discipline an elected official, noting that the Commission doesn't control other elected officials. However, he did read earlier that day that they have more authority over elected officials and their employees than previously thought. The motion carried, with Commissioner Notbohm's amendment.

CALENDAR REVIEW

- 6/01 Meeting regarding proposed Highway 69 reconstruction - 6:30
Montana City school board meeting - 6:30
- 6/02 Salary Compensation Committee - 9:00
Whitehall Chamber meeting - noon
- 6/06 Salary Compensation Committee - 8:00
- 6/07 GASB - Butte - 8:30

COMMISSION REPORTS

HEALTH BOARD

Commissioner Lythgoe reported that the Health Board meeting on the 26th was a good meeting. The board has received three applications for the PHN II position, one from the former health board chair. This person may even be a candidate for health officer. They went over budgets, both the nurse's and the board, in preparation of submittal.

SOUTH HELENA INTERCHANGE

Commissioner Lythgoe reported that he attended a meeting with MDT that morning to discuss the South Helena Interchange. The highway bill has not been approved yet, and there are two different versions - house and senate. The senate bill is 170 million more over the period. Commissioner Lythgoe stated that one problem with the South Helena Interchange is that there is not enough money, and he asked Jim Skinner if the senate bill is approved, would it help. He danced around the question, but finally stated that it would free up money elsewhere, and may help our project.

ROAD STANDARDS

Commissioner Weber stated that he met that morning with Ben and Alan regarding the road standards. Commissioner Lythgoe asked that the next time they meet, they let him and Commissioner Notbohm meet, so that they can also be at the meeting. Commissioner Weber stated that it would be best to address this to Ben, as the most notice he has had is 48 hours. He has asked Alan to let the office know so that all the Commissioners can review the amendments.

SOUTH HILLS DRIVE

Commissioner Weber stated that he received a call from Dr. Kehr. They would like to pursue a RMD for this year, as he doesn't think the meeting with Ben, Lewis & Clark County and Stahly Engineering is going to accomplish anything for this year.

ELECTED OFFICIAL/DEPARTMENT HEAD CONCERNS

Commissioner Lythgoe stated that he has concerns with the continued use of the law library for the Commission meetings, and he is thinking of moving the meeting to the courtroom. He stated

that the Commission is doing things right and taking time, and people are coming to the meetings. If they decide to move to the courtroom, the meetings will have to be moved to Tuesdays. He asked Jan Anderson if this would present a problem for her. Jan stated that she sends her paper out electronically by 1:00 on Tuesday, so Tuesday afternoons would be possible for her. Her only request was to keep the first half-hour light, and not start the more important topics until after 2:00. The Commission next discussed a sound system with a recording component for the courtroom. Commissioner Lythgoe stated that the plan is to have something mobile, but he would almost rather have a separate system, so that it doesn't get beaten up in moving. This proposal will be discussed at the next Commission meeting.

MEETING ADJOURNED

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER